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9-26-1986

State of New York Public Employment Relations Board Decisions from September 26, 1986

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from September 26, 1986

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED FEDERATION OF TEACHERS,

Respondent,

-and-

CASE NO. U-8320

MARVIN NORMAN CASID,

Charging Party.

JAMES R. SANDNER, ESQ. (JOHN H. JURGENS, ESQ.,
of Counsel), for Respondent

MARVIN NORMAN CASID, pro se

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of Marvin Norman Casid to the decision of an Administrative Law Judge (ALJ) dismissing his charge against the United Federation of Teachers (UFT), which alleged that the UFT had violated §209-a.2(a) and (b) of the Act by refusing to provide him with representation.

The charge relates to incidents which occurred between Casid and Kaplan, the chapter chairperson of the UFT at the school where Casid was briefly employed. The transcript reveals considerable conflict between Casid's version of those incidents and that of Kaplan. Based on the nature of their testimony and their demeanor on the witness stand, the

ALJ fully credited the testimony of Kaplan where they differed. The following facts, therefore, are primarily the version of events testified to by Kaplan.

In August 1985, Casid was appointed as a regular substitute at the Evander Childs High School located in the Bronx. On September 11, he was observed by the chairman of his department and was told he would be discharged. On that day he saw Kaplan and complained about the observation and what he believed to be an immediate discharge. He told Kaplan that he had been regularly appointed, from which she got the impression he was a regular teacher, rather than a regular substitute. Accordingly, she advised him to seek a transfer to another school. She took him to the principal's office, spoke to the principal about the matter and left Casid with the principal. She assumed the matter would be taken care of.^{1/}

The next day, Casid sought out Kaplan, who agreed to meet him at the end of the eighth period that day. During the eighth period, Casid came into her office and shouted that she had kept him waiting. He accused her of being a

^{1/}Casid claims that he tried to meet with Kaplan on September 10 but was advised that she was unable to meet with him because she was in a car pool. Kaplan denies speaking with Casid on that date, that she belongs to a car pool, or that she ever said anything of the sort. There is no explanation why Casid would be seeking union representation prior to the events of September 11.

"pawn of the administration" and that "it is people like you who are responsible for the Jews going into the ovens."

Kaplan testified that she demanded an apology, got nervous as a result of Casid's behavior and left her office. Casid followed her into the hallway and she went into the ladies room to avoid him.

The record indicates that Casid also called Thomas Papas, assistant to the UFT president, on September 16, but Papas was unable to speak with him and did not return the call.

Casid never filed a grievance and never actually requested the UFT to file a grievance on his behalf. Indeed, it appears that he never explained the nature of his complaint to any UFT representative.

The ALJ concluded that the evidence could not support a finding that the UFT failed to consider or evaluate a grievance complaint by reason of improper motivation, gross negligence or irresponsible conduct. She found that the UFT did not refuse to represent Casid; rather, that Kaplan made a good faith effort to resolve the problem as she understood it. In the ALJ's opinion, the duty of fair representation did not require Kaplan to subject herself to Casid's intimidating behavior. She also concluded that, under the circumstances, the failure of Papas to return Casid's telephone call did not constitute a violation of the Act.


DISCUSSION

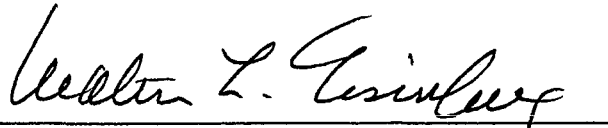
Casid's exceptions relate entirely to the ALJ's findings of fact. Having reviewed the record, we affirm those findings. The ALJ relied upon Kaplan's testimony which contradicts that of Casid. Based in part upon the demeanor of the witnesses on the stand, she found Kaplan's testimony more credible.

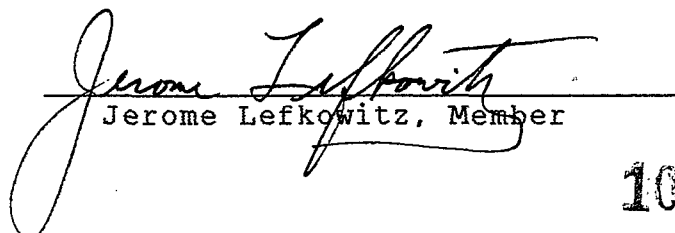
An ALJ's resolution of credibility issues, especially when based upon the demeanor of the witnesses, is entitled to great weight. (See Fashion Institute of Technology v. Helsby, 44 A.D.2d 550, 7 PERB ¶7005 [1st Dep't, 1974].) Furthermore, the record supports the determination as it shows Casid's testimony to be argumentative and lacking in specificity.

NOW, THEREFORE, WE ORDER that the charge herein be,
and it hereby is, dismissed.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

10570

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MOHAWK VALLEY COMMUNITY COLLEGE,

Employer/Petitioner,

-and-

CASE NO. CP-094

MOHAWK VALLEY COMMUNITY COLLEGE
PROFESSIONAL ASSOCIATION,

Intervenor.

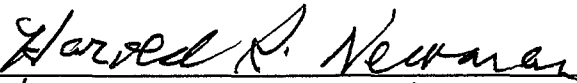
BOARD DECISION AND ORDER

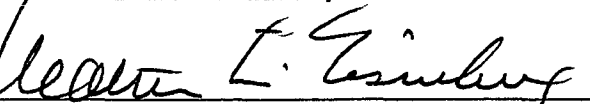
The Mohawk Valley Community College Professional Association (Association) requests permission to appeal the Director's action in processing the petition of the Mohawk Valley Community College, which petition requests the Board to clarify whether four new titles properly belong in the unit represented by the Association. No hearing has been held.

We have determined that an appeal at this time is not warranted under the circumstances.

ACCORDINGLY, WE ORDER that the request of the Association
be, and it hereby is, denied.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF AMHERST,

Employer,

-and-

CASE NO. C-3069

LOCAL 264, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Petitioner,

-and-

AMHERST HIGHWAY EMPLOYEES ASSOCIATION,
INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

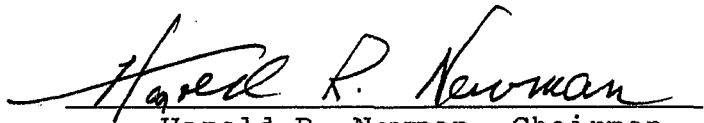
IT IS HEREBY CERTIFIED that the Amherst Highway Employees Association, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All full-time employees in the following titles: Senior Maintenance Worker, Motor Equipment Operator A and B, Working Crew Chief, Working Crew Chief A, Laborer, Auto Mechanic, Maintenance Worker, Sign Painter, Mason, Tree Trimmer, Electrician, Working Automotive Crew Chief, Laborer Crew Chief, Cleaner, Watch Attendant.


Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Amherst Highway Employees Association, Inc. and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

10573

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

BUFFALO CITY SCHOOL DISTRICT,

Employer,

-and-

CASE NO. C-3099

SUBSTITUTES UNITED BUFFALO/NEA/NY,

Petitioner.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Substitutes United Buffalo/NEA/NY has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All persons issued a notice of reasonable assurance of continuing employment by the Buffalo City School District, as defined in §201.7(d) of the Public Employees' Fair Employment Act.

10574

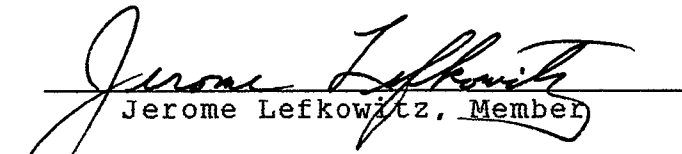
Excluded: All persons employed by the District in
a capacity other than per diem
substitute teacher.

Further, IT IS ORDERED that the above named public employer
~~shall negotiate collectively with the Substitutes United Buffalo/~~
NEA/NY and enter into a written agreement with such employee
organization with regard to terms and conditions of employment of
the employees in the above unit, and shall negotiate collectively
with such employee organization in the determination of, and
administration of, grievances of such employees.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF THROOP,

Employer,

-and-

CASE NO. C-3050

TEAMSTERS UNION LOCAL 506, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Petitioner.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that Teamsters Union Local 506, International Brotherhood of Teamsters has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All motor equipment operators.

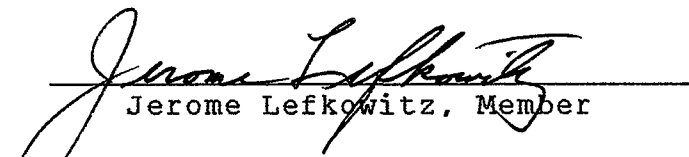
Excluded: All other employees of the employer.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Teamsters Union Local 506, International Brotherhood of Teamsters and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF SHELTER ISLAND,

Employer,

-and-

CASE NO. C-3079

SHELTER ISLAND HIGHWAY BENEVOLENT
ASSOCIATION, INC.,

Petitioner,

-and-

TOWN OF SHELTER ISLAND HIGHWAY UNIT,
LOCAL 852, CSEA,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,


IT IS HEREBY CERTIFIED that the Shelter Island Highway Benevolent Association, Inc. has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

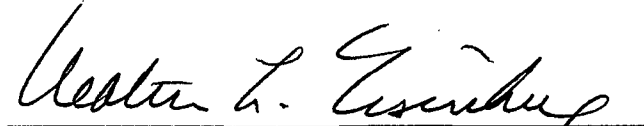
Unit: Included: All full-time employees in the following titles: mechanic, construction equipment operator, HEO, AEO, laborer, maintenance person, foreman.

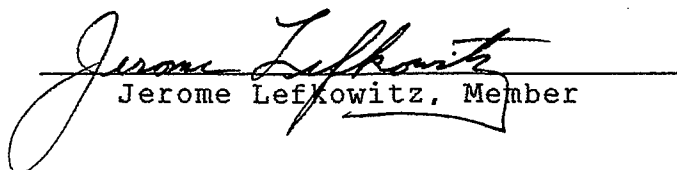
Excluded: Part-time employees, seasonal employees and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Shelter Island Highway Benevolent Association, Inc. and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lefkowitz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF ERIE,

Employer,

-and-

CASE NO. C-2830

UNITED PROFESSIONAL NURSES ASSOCIATION,

Petitioner-Intervenor,

-and-

NEW YORK STATE NURSES ASSOCIATION,

Intervenor,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the New York State Nurses Association has been designated and selected by a majority of the employees of the above-named employer, in the unit described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Full-time, regular part-time and part-time employees licensed or otherwise lawfully authorized to practice as registered nurses in the positions specified in Appendix A.

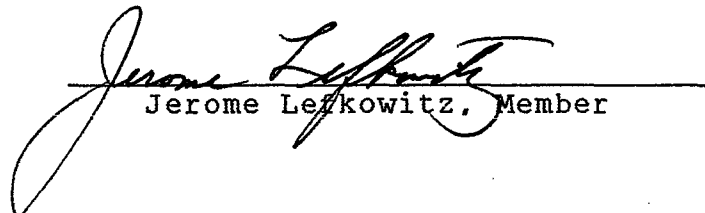
Excluded: All other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the New York State Nurses Association and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: September 26, 1986
Albany, New York


Harold R. Newman, Chairman


Walter L. Eisenberg, Member


Jerome Lezkowitz, Member

APPENDIX A

Anesthetist
Anesthetist (RPT)
Assistant Head Nurse
Assistant Supervising Public Health Nurse
Charge Nurse
Clinical Teacher
Coordinating Maternity Nurse
Discharge Assessment Nurse
General Duty Nurse
General Duty Nurse (RPT)
Head Nurse
Inservice Education Coordinator
Nurse Coordinator - Lead Poisoning Prevention Program
Nurse Diabetes Teaching Service
Nurse - Renal Teaching Service
Nurse Clinician - Alcoholism
Nurse Clinician (ENT)
Nurse Clinician - Cardiovascular
Nurse Clinician - Critical Care
Nurse Clinician - Neurology
Nurse Clinician - Psychiatry
Nurse Clinician - Psychiatry (RPT)
Nurse Clinician - Renal
Nurse Clinician - Neurosurgery
Nurse Clinician - Orthopedics
Nurse Epidemiologist
Nurse Practitioner
Nursing Care Coordinator
Nursing Care Coordinator (RPT)
Nursing Inservice Coordinator
Nursing Supervisor (Home & Infirmary)
Nursing Team Leader
Public Health Nurse
Public Health Nurse Coordinator
Psychiatric Clinical Nurse Administrator
Registered Nurse
Supervising Public Health Nurse
Utilization Review Nurse